

REMARKS

Applicants greatly appreciate the Examiner taking the time to call the Applicants to advance prosecution of the Application. The Office Action mailed March 4, 2009 has been carefully considered. In this Office Action, Claims 1-3, 5, 6, and 8-16 have been rejected and remain pending. Claims 4 and 7 have been previously cancelled without prejudice. Claims 1-3, 5, 6, 8-13, and 16 have been rejected under 35 USC 103. Claims 1 and 11 have been amended with the filing of this response and these amendments are supported by the claims as filed and the specification at Page 19 paragraph 40 and page 23 paragraph 46. Based on the aforementioned amendments and arguments presented herein, Applicants respectfully request reconsideration and removal of the aforementioned rejections.

35 USC 103 rejections of Claims 1-3, 5, 6, and 8-10

The Office Action rejected Claims 1-3, 5, 6, and 8-10 under 35 USC 103 as unpatentable over Ohran (US 5,812,748), hereinafter Ohran, in view of Vinther et al (WO 92/18931), hereinafter Vinther, in further view of Yamagami [US 7,096,269 B2], herein after Yamagami. Claim 1 is an independent claim, Claims 2, 3, 5, 6, and 8-10 are dependant on Claim 1 and, for the sake of brevity, these rejections will be argued together. Applicants respectfully assert that Ohran, Vinther, and Yamagami can not be used as a proper 35 USC 103 rejection for Claim 1 as they do not satisfy the KSR test as promulgated by the Supreme Court.

In *Teleflex v. KSR*, the Supreme Court stated that a proper 35 USC 103 rejection requires the following steps be performed: (1) Determining the scope and content of the prior art; (2) Ascertaining the differences between the claimed invention and the prior art; and (3) Resolving

the level of ordinary skill in the pertinent art. *Teleflex Inc. v. KSR Int'l Co.* 127 S.Ct. 1727, 1741, 82 USPQ.2d 1385, 1396 (2007). This three part test has also been reemphasized and promulgated in the Federal Register. *Federal Register*, Vol. 72, No. 195.

With respect to the first prong of KSR, Ohran states he provides “a method for providing a rapid recovery from a network file server failure. Ohran further states “[i]n the event of failure of the file server computer, the backup computer can replace the file server, using the copy of the file server’s data stored on its disks.” As well, Ohran states “[u]nlike other redundant file server configurations, this method does not require the backup computer system to be running the file server operating system.”

With respect to the second prong of KSR and Ohran, Applicants assert that Ohran does not disclose “receiving transmission packets containing said network information of the primary network including a heartbeat datagram into an internal thread of the primary network” or determine “the unavailability of the primary network in conjunction with a determination that the storage systems are still available . . . “enables transmission of the stored write packets including the heartbeat datagram via said alternate path.”

Applying the first prong of KSR to Vinther, Applicants assert Vinther describes “a fault tolerant network file system having a primary fileserver and a backup fileserver which mirrors the primary. When the primary fails, the backup assumes the role of the primary on the network in a manner transparent to users whose files are stored on the primary.” With respect to the second prong of KSR and Vinther, Applicants assert that Vinther does not disclose not disclose “receiving transmission packets containing said network information of the primary network including a heartbeat datagram into an internal thread of the primary network” or determine “the

unavailability of the primary network in conjunction with a determination that the storage systems are still available . . . “enables transmission of the stored write packets including the heartbeat datagram via said alternate path.”

Applying the first prong of KSR to Yamagami , Yamagami “provides techniques for managing data flow over a plurality of connections between primary and remote storage devices . . . the primary storage system chooses one of a plurality of networks connecting it to the secondary storage system, depending upon a users’ policy. Since networks have different characteristics, in terms of, for example, performance, security, reliability, and costs, the user can specify which network(s) are used under various circumstances, i.e., daytime operation, nighttime operation, normal operation, emergency, and so forth.” That is, Yamagami manages copying of data between storage systems by choosing a network from of a plurality of networks based on the desired transfer time and reliability of transfer.

With respect to the second prong of KSR and Yamagami , Applicants assert that Yamagami does not disclose not disclose “receiving transmission packets containing said network information of the primary network including a heartbeat datagram into an internal thread of the primary network” or determine “the unavailability of the primary network in conjunction with a determination that the storage systems are still available . . . “enables transmission of the stored write packets including the heartbeat datagram via said alternate path.”

Applicants therefore assert that the cited references, in isolation or in combination, do not teach the claimed invention. Applicants further assert that one skilled in the relevant computer arts would not bridge the gap to arrive at the current invention. Therefore, Applicants

respectfully assert that these references, in combination or in isolation, fail to satisfy the 35 USC 103 test as promulgated by the Supreme Court in KSR.

As a result, Applicants assert that this 35 USC 103 rejection is improper and respectfully request it be removed and independent Claim 1 be placed in condition for allowance. Consequently, Applicants respectfully request removal of the rejection of Claim 1 and that this claim be put in condition for allowance. As Claims 2, 3, 5, 6, and 8-10 depend from Claim 1, and Claims 1 is believed allowable, Claims 2, 3, 5, 6, and 8-10 should be allowable for at least the same reasons. Therefore, Applicants also request removal of the rejections of Claims 2, 3, 5, 6, and 8-10 and that these claims be placed in condition for allowance.

35 USC 103 rejection of Claims 11, 12, 13, and 16

The Office Action rejected Claims 11, 12, 13, and 16 under 35 USC 103 as unpatentable over Ohran (US 5,812,748), hereinafter Ohran, in view of Yamagami [US 7,096,269 B2], herein after Yamagami. Claim 11 is an independent claim, Claims 12, 13, and 16 are dependant on Claim 11 and, for the sake of brevity, these rejections will be argued together. Applicants respectfully assert that Ohran and Yamagami can not be used as a proper 35 USC 103 rejection for Claim 11 as they do not satisfy the KSR test as promulgated by the Supreme Court.

In *Teleflex v. KSR*, the Supreme Court stated that a proper 35 USC 103 rejection requires the following steps be performed: (1) Determining the scope and content of the prior art; (2) Ascertaining the differences between the claimed invention and the prior art; and (3) Resolving the level of ordinary skill in the pertinent art. *Teleflex Inc. v. KSR Int'l Co.* 127 S.Ct. 1727, 1741, 82 USPQ2d 1385, 1396 (2007). This three part test has also been reemphasized and promulgated in the Federal Register. *Federal Register*, Vol. 72, No. 195.

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With respect to the second prong of KSR and Ohran, Applicants assert that Ohran does not disclose not disclose “receiving transmission packets containing said network information of the primary network including a heartbeat datagram into an internal thread of the primary network” or determine “the unavailability of the primary network in conjunction with a determination that the storage systems are still available . . . “enables transmission of the stored write packets including the heartbeat datagram via said alternate path.”

Applying the first prong of KSR to Yamagami , Applicants assert Yamagami “provides techniques for managing data flow over a plurality of connections between primary and remote storage devices . . . the primary storage system chooses one of a plurality of networks connecting it to the secondary storage system, depending upon a users' policy. Since networks have different characteristics, in terms of, for example, performance, security, reliability, and costs, the user can specify which network(s) are used under various circumstances, i.e., daytime operation, nighttime operation, normal operation, emergency, and so forth.” That is, Yamagami manages copy data between storage systems by choosing different of a plurality of networks based on the desired performance and performance network of that network.

With respect to the second prong of KSR and Yamagami , Applicants assert that Yamagami does not disclose not disclose “receiving transmission packets containing said network information of the primary network including a heartbeat datagram into an internal thread of the primary network” or determine “the unavailability of the primary network in conjunction with a determination that the storage systems are still available . . . “enables transmission of the stored write packets including the heartbeat datagram via said alternate path.”

Applicants therefore assert that the cited references, in isolation or in combination, do not teach the claimed invention. Applicants further assert that one skilled in the relevant computer arts would not bridge the gap to arrive at the current invention. Therefore, Applicants respectfully assert that these references, in combination or in isolation, fail to satisfy the 35 USC 103 test as promulgated by the Supreme Court in KSR. As a result, Applicants assert that this 35 USC 103 rejection is improper and respectfully request it be removed and independent Claim 11 be placed in condition for allowance. As Claims 12, 13 and 16 depend from Claim 11, Applicants assert that they should be allowable for at least the same reasons as the independent claim. Applicants therefore request that the rejection of these claims also be removed and the dependant claims also be placed in condition for allowance.

Conclusion

In view of the foregoing, the Applicants believe that the application is in condition for allowance and respectfully request favorable reconsideration.

In the event the Examiner deems personal contact desirable in the disposition of this case, the Examiner is invited to call the undersigned attorney at (508) 293-7450.

Please charge all fees occasioned by this submission to Deposit Account No. 05-0889.

Respectfully submitted,

Dated: June 4, 2009

/Joseph D'Angelo/
Joseph D'Angelo (Reg. No. 56,800)
Attorney for Applicants
EMC Corporation
Office of General Counsel
176 South Street
Hopkinton, MA 01748
Telephone: (508) 293-7450
Facsimile: (508) 293-7189